IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 31456 of 2007(T)

PETITIONER:

SATHEESH.A, SANTHOSH BHAVAN,
NARIKKAL, KATTAYIKONAM.

BY ADV. SRI.K.V.GOPINATHAN NAIR

RESPONDENTS:

THE JOINT REGIONAL TRANSPORT OFFICER,
KAZHAKKOOTTAM.

BY GOVERNMENT PLEADER SRI. TEK CHAND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON 05/12/2007 DELIVERED THE FOLLOWING:

WP(C) NO: 31456/2007 T

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE REGISTRATION CERTIFICTE IN RESPECT OF KL-01/K/781.

EXT.P2. COPY OF THE DISK EVIDENCING PAYMENT ON 23/1/2004 FOR QUARTER ENDING DT. 31/3/2004.

EXT.P3. COPY OF THE CHECK REPORT DT. 25/2/2004.

EXT.P4. COPY OF THE REQUEST MADE BY THE PETITIONER BEFORE THE RESPONDENT DT. 09/07/2007.

EXT.P5. COPY OF THE LETTER OF THE RESPONDENT DT. 20/07/07 WITH COPY TO THE PETITIONER.

RESPONDENT'S EXHIBITS NIL.

True copy

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ANTONY DOMINIC, J.

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W.P.(C) No. 31456 OF 2007 T

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Dated this the 5th December, 2007

J U D G M E N T

Petitioner is the registered owner of a Mahindra Van bearing No. KL-01/K 781. It is stated that the tax for the quarter ending 31-3-2004 was remitted by the petitioner on 23-1-2004. Thereafter the petitioner went abroad looking for better avenues, leaving custody of the vehicle to his driver. On 25-2-2004 the vehicle was checked by the respondent and Ext. P3 check report shows that evidence of payment of tax was not produced at the time of the inspection. It is stated that on that basis the vehicle has been taken into custody of the Motor Vehicles Department and even as on today, the vehicle continues to be in their custody. Presently what the petitioner is asking for is that the vehicle should be released to him.

2. He made a request to the respondent and thereupon the respondent had sought clarification from the Transport

Commissioner by Ext. P5. As clarification sought for is not forthcoming it is complained by the petitioner that the vehicle still continues to be in the custody of the Motor Vehicles Department. It is in these circumstances the writ petition has been filed praying for a declaration that the petitioner is entitled to get the vehicle released.

3. On facts, it is fairly clear that even according to the respondents it is not as if the petitioner had not paid tax at the time when the vehicle was taken into custody on 25-2-2004. On the other hand it appears to be a case where there was failure on the part of the driver of the vehicle in producing proof of payment of tax. It is also the admitted position that at any time after the vehicle was taken into custody G form was not filed, which is a requirement under Section 5 of the Motor Vehicles Taxation Act. It is in this factual background, the claim of the petitioner for releasing the vehicle without payment of tax has to be considered.

4. Section 22 of the Motor Vehicles Taxation Act, 1976 authorises the Government to grant exemption or reduction in tax. The Government in exercise of that power have issued SRO No. 878/75 exempting the classes of motor vehicles mentioned therein

from payment of tax under the Act. Clause 27 of the said SRO 878/75 provides that all Motor Vehicles held in the custody of the Police or other authorities for offences other than non-payment of tax, are entitled to exemption for the period during which such vehicles are in custody.

5. In this case, petitioner submits that since the vehicle of the petitioner was taken into custody, not for non-payment of tax but for non-production of proof of payment of tax. Therefore, it is contended that the vehicle is liable to be exempted from payment of motor vehicles tax, in terms of Clause 27 of SRO No. 878/75. Petitioner also submits that since SRO 878/75 was issued in terms of Section 22 of the Motor Vehicles Taxation Act, the requirement of filing of G form in terms of Section 5 of the Act is inapplicable in such a situation.

6. If I accept this contention of the petitioner, I can straight away direct release of the vehicle without saddling on him any liability for motor vehicles tax for the period subsequent to 31.3.2004. However, I notice is that this very issue has been considered by a Full Bench of this Court in Regional Transport Officer v. Abdurahiman {2007 (1) KLT 613} . In that judgment, this

Court had occasion to refer to clause 27 of SRO No. 878/75. The Full Bench held that in every claim for exemption from motor vehicles tax, be it under Section 5 of under Section 22, the procedure laid down under the Kerala Motor Vehicles Taxation Act has to be complied with. The procedure laid down in the Act is in Section 5 of the Act which mandates filing of G form. This seems to be the ratio laid down by the Full Bench in paragraphs 11 and 12 of the judgment.

7. In this case, whatever be the reason therefor, the fact is admitted that G form was not filed. If that be so, in the light of the law as laid down by the Full Bench, this Court will not be justified in granting the relief sought for by the petitioner.

Writ petition fails and is dismissed.

ANTONY DOMINIC
JUDGE

jan/-